

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

THOMAS E. LUNNEEN,

Case No. 1:20-cv-01007-HYJ-PJG

Plaintiff,

HON. Hala Y. Jarbou

v.

BERRIEN SPRINGS, VILLAGE OF, et al.,

Defendants.

Mel C. Orchard III

Noah W. Drew (P74335)

Emily S. Madden

Catherine D. Rust

THE SPENCE LAW FIRM LLC

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Jackson, Wyoming 83001

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*Attorneys for Berrien Springs Defendants*

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James M. Straub (P21083)

STRAUB, SEAMAN & ALLEN P.C.

1014 Main Street / P.O. Box 318

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[jmcgovern@lawssa.com](mailto:jmcgovern@lawssa.com)

[jstraub@lawssa.com](mailto:jstraub@lawssa.com)

*Attorneys for Berrien County Defendants*

**STIPULATED MOTION FOR ORDER ADJOURNING  
STATUS CONFERENCE DATE TO OCTOBER 11, 2023**

1. This is a civil rights action that was filed on October 21, 2020. [ECF No. 1].

2. The Berrien Springs Defendants and the Berrien County Defendants filed Motions for Summary Judgment and the Court issued its rulings on these motions on November 1, 2022 (ECF No. 165).

3. Defendants filed respective appeals to the Sixth Circuit Court of Appeals and they were briefed, and argued, as Case Nos. 22-2044 / 22-2046. (ECF No. 182 and ECF No. 184).

4. On September 21, 2023, the 6<sup>th</sup> Circuit Court of Appeals issued its decision and affirmed the District Court's rulings on the respective motions for summary judgment. (Case 22-2044 Document: 45-1).

5. On September 22, 2023, the District Court issued a Notice of Hearing for a Status Conference to be held on October 5, 2023 (ECF No. 202).

6. Attorney McGovern is lead trial counsel for Defendant Berrien County Sheriff's Office Sgt. Johnson.

7. On October 5, 2023, Attorney McGovern will be in Denver, Colorado for party depositions in Case No. 1:23-cv-266 with Notice of Depositions issued and airline tickets purchased. One of the deponents is Attorney McGovern's client – Defendant Grant. Mr. Grant's deposition is scheduled for 9:00AM (MT) on October 5, 2023. There are two other depositions scheduled to proceed, in-person, later in the day on October 5, 2023. These three depositions were scheduled and Noticed on September 1, 2023. (See Renotice of Depositions – attached as an exhibit for reference).

8. Attorney McGovern notified Plaintiff's Counsel and Co-Defendants' Counsel of the conflict on September 22, 2023 immediately after receipt of the subject Notice of Hearing. The parties' all agreed to a proposed stipulated order to adjourn, and reset, the October 5, 2023 Status Conference to a date convenient for all parties.

9. Plaintiff's counsel additionally requests that the Status Conference be held via videoconference given that lead counsel for the plaintiff is not local; Defense counsel have no objection to Plaintiff's Counsel's request for videoconference.

10. Based on the foregoing facts, the parties respectfully request that the Court adjourn the currently scheduled Status Conference and reset it for the afternoon of October 11, 2023.

11. A case scheduling order may be modified only for good cause and with the judge's consent. Fed. R. Civ. P. 16(b)(4).

12. There is no prejudice to any party because all parties stipulate to the requested extension.

13. No party has acted in bad faith in making this request. Instead, the parties believe there is a good faith basis for the Court to adjourn and reschedule the Status Conference due to the scheduling conflict.

WHEREFORE the parties respectfully request that the Court grant their Stipulation For Order to Adjourn the Status Conference to October 11, 2023 or a date within a week thereafter.

Respectfully submitted,

/s/ JAMES T. MCGOVERN  
JAMES T. MCGOVERN (P79410)  
Straub, Seaman & Allen, P.C.  
Attorneys for Berrien Defendants  
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(269) 982-1600

/s/ G. Gus Morris  
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/s/ Noah W. Drew

Melvin C. Orchard III (WSB No. 5-2984)  
Noah W. Drew (WSB No. 7-4888)  
Emily S. Madden (WSB No. 7-6272)  
Catherine e. DiSanto (WSB No. 7-6296)  
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P.O. Box 880  
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(269) 683-5121  
Attorneys for Plaintiff

**From:** [Mel Orchard](#)  
**To:** [James McGovern](#)  
**Cc:** [Noah Drew](#); [Gus Morris](#); [Kathie Lane](#); [John Gemellaro](#); [Catherine Rust](#); [Jennifer Lira](#)  
**Subject:** Re: Lunneen  
**Date:** Monday, September 25, 2023 11:04:44 AM

---

thank you...approved...

Mel

Mel Orchard  
Board Certified Trial Lawyer  
The Spence Law Firm, LLC  
Jackson, Wyoming 83001  
[orchard@spencelawyers.com](mailto:orchard@spencelawyers.com)

This is a confidential email. Please disregard and destroy if you are not the intended recipient. If you have questions and cannot reach me directly, please email my assistant, Jennifer Lira at [Lira@spencelawyers.com](mailto:Lira@spencelawyers.com) or call the office at 307-733-7290.



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On Sep 25, 2023, at 8:58 AM, James McGovern <[jmcgovern@lawssa.com](mailto:jmcgovern@lawssa.com)> wrote:

Mel - I edited that para; let me know if this is acceptable to be filed with your e-signature.

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**From:** Mel Orchard <[orchard@spencelawyers.com](mailto:orchard@spencelawyers.com)>  
**Sent:** Monday, September 25, 2023 10:43 AM  
**To:** James McGovern <[jmcgovern@lawssa.com](mailto:jmcgovern@lawssa.com)>

**Cc:** Noah Drew <[drew@spencelawyers.com](mailto:drew@spencelawyers.com)>; Gus Morris <[gmorris@mcgrawmorris.com](mailto:gmorris@mcgrawmorris.com)>; Kathie Lane <[klane@mcgrawmorris.com](mailto:klane@mcgrawmorris.com)>; John Gemellaro <[jgemellaro@mcgrawmorris.com](mailto:jgemellaro@mcgrawmorris.com)>; Catherine Rust <[disanto@spencelawyers.com](mailto:disanto@spencelawyers.com)>; Jennifer Lira <[lira@spencelawyers.com](mailto:lira@spencelawyers.com)>

**Subject:** Re: Lunneen

Looks good with me, with the only change is that lead counsel is not local, we have local counsel.

Sent from my iPhone

On Sep 25, 2023, at 7:54 AM, James McGovern <[jmcgovern@lawssa.com](mailto:jmcgovern@lawssa.com)> wrote:

Noah and Gus –

See my draft stip motion for a new date for the status conference (afternoon of 10/11). I also put in the request for zoom.

Let me know if you have any edits; if not, please let me know if my office has your permission to e-sign on your behalf and file

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All - we just got an order to be in Court at 2pm on 10/5 for a status conference. I will be in Denver for work with airfare

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**To:** Noah Drew <[drew@spencelawyers.com](mailto:drew@spencelawyers.com)>  
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<NOD-Grant, Kay and O'Gorek 10-5-23.pdf>

<D's Proposed Stip re Status Conference Adjournment-9.25.23.docx>

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**Subject:** RE: Lunneen  
**Date:** Monday, September 25, 2023 10:03:05 AM

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Approved

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CHRISTINA TACKETT, as Personal  
Representative of the Estate of  
KEVIN RAY TACKETT, Deceased,

CASE NO. 1:23-cv-266

v Plaintiff,  
v

HON. ROBERT J. JONKER

FIVE STAR ENERGY SERVICES LLC  
and MATHEW GRANT,

Defendants.

---

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[dvanhoven@lawssa.com](mailto:dvanhoven@lawssa.com)

Grover  
Lewis  
Johnson

---

RENOTICE OF DEPOSITIONS

(Previously scheduled for 9/6/23)

PLEASE TAKE NOTICE that the depositions of the witnesses named below will be taken before a notary public and qualified court reporter as follows:

DATE: **October 5, 2023**

WITNESS: **Mathew Grant**  
TIME: **9:00 a.m. (MT)**

WITNESS: **Courtney Kay**  
TIME: **11:00 a.m. (MT)**

WITNESS: **Jarad O'Gorek**  
TIME: **12:00 p.m. (MT)**

PLACE: **Naegeli Deposition & Trial  
600 17<sup>th</sup> St., Suite 2800 South  
Denver, CO 80202**

**Counsel may appear via ZOOM. ZOOM ID to be provided.**

These depositions will be taken pursuant to MCR 2.306. You are at liberty to appear at the time and place mentioned and examine said witnesses.

Respectfully submitted,

GROVER LEWIS JOHNSON  
Attorneys for Defendant Five Star Energy

Date: September 1, 2023

By: \_\_\_\_\_

Robert J. Johnson (P42458)

Jacob E. VandeZande (P85037)

BUSINESS ADDRESS & TELEPHONE NO.:  
3514 Rivertown Point Court SW  
Grandville, MI 49418-2727  
(616) 257-3900 / (616) 257-8555

*Grover  
Lewis  
Johnson*

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record and/or non-represented parties herein at their respective addresses as directed on the pleadings on 9/11/23 by:

US Mail  Fax  Email  UPS/FedEx  E-Filing/Email

  
\_\_\_\_\_  
**Lynne Gaunt**